

Senate Bill No. 268

CHAPTER 855

An act to amend Sections 20751, 20776, 21037, 21050, 21293, and 21294 of, and to add Sections 20751.5, 20910, and 21251.15 to, the Government Code, relating to public employees' retirement.

[Approved by Governor October 11, 2003. Filed
with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 268, Soto. Public employees' retirement: service credit payments and benefits.

(1) Under the Public Employees' Retirement Law, retirement benefits are calculated in part based on years of creditable service. Under that law, members may elect to purchase service credit for various types of public service, upon payment of additional contributions. If a member dies under circumstances in which a special death benefit is payable, or if a member becomes subject to retirement for industrial disability, and the member has not paid the entire amount for a service credit purchase, the balance remaining unpaid is generally payable immediately. However, the survivor of a member who died with a special death benefit payable and had authorized payroll deductions may continue those deductions from the survivor allowance in lieu of the lump-sum payment otherwise required.

This bill would, subject to certain limitations, authorize members who have elected to purchase service credit on an installment basis to prospectively discontinue the payments if the member becomes disabled and the service credit purchase will not result in a higher retirement allowance than the member's disability retirement allowance. The bill would also permit the survivor of a member who was making service credit purchase payments on an installment basis, and who died with a special death benefit payable, to prospectively discontinue making payments for the member's service credit purchase, if the service credit purchase would not increase the survivor's allowance and if various conditions are satisfied. The bill would require the amount of any service credit purchase installment payments commencing after January 1, 2004, to include an actuarial adjustment, as necessary and subject to a specified limit, to take into account the bill's provisions. The bill would also make related changes to those provisions.

(2) Existing law requires that, upon legal separation or dissolution of marriage of a member of the Public Employees' Retirement System, the

court divide the accumulated contributions and service credit attributable to periods of service during the marriage into separate accounts between the member and the spouse and, among other things, address the rights of the spouse to redeposit previously withdrawn contributions and to purchase service credit for specified periods. Following that division of accounts, existing law authorizes the former spouse to withdraw his or her share of accumulated contributions and thereby waive his or her rights under the system and, in turn, authorizes the member to redeposit, for the member's account, accumulated contributions withdrawn by his or her former spouse. If the former spouse does not withdraw his or her share of accumulated contributions, existing law prescribes the method for calculating the retirement allowance of the former spouse.

This bill would additionally authorize a member, whose former spouse has waived his or her rights under the system, to redeposit the amount of previously withdrawn contributions that could have been redeposited by the former spouse and to purchase the same amount and type of service credit that the former spouse had the right to purchase, as specified. The bill would also prescribe a method for calculating the retirement allowance of a member who retires on or after January 1, 2004, and whose former spouse is eligible to retire or has retired, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 20751 of the Government Code is amended to read:

20751. If a nonmember, as defined in Section 21291, withdraws accumulated contributions in accordance with Section 21292, the member may redeposit those contributions pursuant to this article.

SEC. 2. Section 20751.5 is added to the Government Code, to read:

20751.5. A member whose right to redeposit contributions has been awarded in part to a nonmember, pursuant to paragraph (3) of subdivision (c) of Section 21290, may elect to redeposit contributions for the same amount that the nonmember was entitled to redeposit, if the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. A member electing to redeposit contributions pursuant to this section shall make the redeposit pursuant to Section 20750.

SEC. 3. Section 20776 of the Government Code is amended to read:

20776. (a) If a basic death benefit becomes payable before the payment of the total amount the member elected to pay under any election with respect to normal contributions, arrears contributions,



absences, or public service credit permitted under this part, the member's entire compensation, or the service upon which that total amount was based, as the case may be, shall be included in the computation of the portion of the death benefit that is provided in subdivision (b) of Section 21532, and the unpaid balance of the total amount may not be paid to this system, nor may it be included in the member's accumulated contributions that constitute a part of the basic death benefit.

(b) Any balance of any total amount remaining unpaid at the death of the member on account of whom a special death benefit is payable or at the retirement of a member for industrial disability may be subject to Section 21037 when payment of the balance would not increase the allowance payable. When the balance of the amount remaining unpaid would increase the allowance payable, the balance shall become due and payable immediately, except that the survivor of a member who died under circumstances under which a special death benefit is payable and who had authorized payroll deductions may elect to continue those deductions from the survivor allowance in lieu of the lump-sum payment otherwise required. If the balance is not paid, the portion of the unpaid amount representing contributions on compensation earned in the membership applicable to the member at the time of injury resulting in death or disability shall be deducted from the benefit otherwise payable and this system shall be discharged from any liability for any annuity or benefit with respect to any remainder of the unpaid contribution.

(c) Any balance of the total amount remaining unpaid at the time of retirement for service or ordinary disability, or at death, with respect to which a benefit is payable under Section 21546, may be subject to Section 21037 when payment of the balance would not increase the allowance payable. When the balance of the amount remaining unpaid would increase the allowance payable, the balance shall become due and payable immediately, except that the survivor of a member who died under circumstances under which a benefit under Section 21546 is payable and who had authorized payroll deductions may elect to continue those deductions from the survivor allowance in lieu of a lump-sum payment of the balance due. If the balance is not paid, the service credit included in the election shall be reduced proportionately and any service credit dependent on completion of payments eliminated for purposes of computing the allowance but not for purposes of determining entitlement to an allowance.

(d) Notwithstanding any provision of subdivision (b) or (c), a member who retires before payment of the total amount which he or she elected to pay, may elect to pay the balance due, or the total amount if no payroll deductions had been made prior to retirement, by deductions



from his or her retirement allowance equal to those which the member authorized as payroll deductions. In that case, service credit included in the election may not be reduced, nor may any prior service dependent on completion of payments be eliminated for purposes of computing the allowance. Any balance of the total amount remaining unpaid upon the death of the member shall be treated in the same manner as unpaid balances are treated if a special death benefit is payable, except that the survivor of a retired member who had authorized deductions from his or her retirement allowance in accordance with this subdivision, and who is eligible for a monthly allowance, may elect to continue those deductions from the survivor's allowance in lieu of the lump-sum payment otherwise required.

(e) Interest paid with respect to normal contributions, arrears contributions, absences, or public service credit permitted under this part, prior to date of retirement or death of the member, shall be credited to the member's individual account. Interest paid after the date of retirement or death of the member shall be credited to the retirement fund pursuant to Section 20174.

SEC. 4. Section 20910 is added to the Government Code, to read:

20910. A member whose right to elect to receive service credit pursuant to Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) has been awarded in part to a nonmember, pursuant to paragraph (4) of subdivision (c) of Section 21290, may elect to receive service credit for the same amount and type of service credit that the nonmember is entitled to purchase, if the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. A member electing to receive service credit pursuant to this section shall make the contributions required under this chapter for the particular amount and type of service credit.

SEC. 5. Section 21037 of the Government Code is amended to read:

21037. Notwithstanding any other provision of law, the following shall apply:

(a) A member who has elected to receive credit for service by contributing in installments and who retires for disability on or after January 1, 2004, when the election for service credit does not increase the member's allowance payable, may elect to cancel the installments prospectively. The member's election may be received by the system no more than 30 days after the date on which the member's retirement for disability is approved. The effective date of the member's election shall be the effective date of the member's retirement for disability. No refund of contributions paid in installments prior to the effective date of the



member's election may be payable to a member or retired member as a result of an election made by a member pursuant to this section.

(b) A member's election pursuant to this section shall be void, and installment payments shall resume, upon a member's reinstatement from retirement for disability. The remaining balance due shall be recalculated to include interest during the disability retirement period.

(c) On or after January 1, 2004, the survivor of a member who elected to receive credit for service by contributing in installments, when the survivor is eligible to receive an allowance subject to Section 21541, may elect to cancel the installments prospectively when the election for service credit does not increase the survivor's allowance payable. The survivor's election shall be received by the system no more than 30 days after the member's date of death. The effective date of the survivor's election shall be the member's date of death. No refund of contributions paid in installments prior to the member's date of death may be payable as a result of an election made by a survivor pursuant to this section.

(d) A survivor's election pursuant to this section shall be void, and installment payments shall resume, upon a determination that the death was not industrial, following payment of a temporary special death benefit allowance, provided that the survivor is then entitled to a monthly allowance under Section 21546, 21547, 21547.7, or 21548. The remaining balance due shall be recalculated to include interest during the temporary special death benefit period.

(e) A member who retired for disability prior to January 1, 2004, or the survivor of a deceased disability retiree who began receiving a postretirement death benefit allowance prior to January 1, 2004, or the survivor of a member who began receiving an allowance subject to Section 21541 prior to January 1, 2004, may elect to cancel installments prospectively when the election for service credit does not increase the allowance payable. The effective date of the election shall be the date that the election is received by this system. No refund of contributions paid in installments prior to the effective date of the election may be payable pursuant to this section.

SEC. 6. Section 21050 of the Government Code is amended to read:

21050. (a) An election by a member to receive credit for service under this part, in addition to his or her current and prior service credit, shall be effective only if accompanied by a lump-sum payment or an authorization for payments, other than a lump-sum payment, in accordance with regulations of the board.

(b) If a member electing to receive credit for service under this part is authorized to pay for that service in installment payments beginning on or after January 1, 2004, the amount of the installment payments shall include an actuarial adjustment, as determined by the chief actuary, as



necessary to take into account the provisions of Section 21037. The amount of the actuarial adjustment may not exceed one-half of 1 percent of the total installment payment.

SEC. 7. Section 21251.15 is added to the Government Code, to read:

21251.15. (a) Notwithstanding any other provision of this part, when a member's account has been divided pursuant to Section 21290, and the nonmember has not effected a refund of accumulated contributions pursuant to Section 21292 prior to the member's effective date of retirement, and the nonmember has sufficient credited service to retire for service, the retirement allowance payable to a member who retires on or after January 1, 2004, shall be equal to the difference between (1) the allowance that would have been payable to the member had the division of the account not occurred and (2) the allowance payable to the nonmember on either (A) the effective date of the nonmember's retirement, or (B) if the nonmember has not retired on or before the member's effective date of retirement, the date the nonmember would have attained the age of 50 years, for service subject to Section 21362.2, and the date the nonmember would have attained the age of 55 years, or the member's actual age if older than the age of 55 years on the effective date of the member's retirement, for all other service.

(b) If the nonmember retires prior to the effective date of the member's retirement, an actuarial adjustment shall also be made to the member's allowance to account for the benefits received by the nonmember spouse prior to the member's effective date of retirement.

(c) In no event may the member's retirement allowance payable under this section be less than the allowance that would otherwise be payable under this part.

SEC. 8. Section 21293 of the Government Code is amended to read:

21293. (a) The nonmember who is awarded a separate account may redeposit accumulated contributions previously refunded to the member in accordance with the determination of the court required by Section 21290.

(b) The nonmember may redeposit only those accumulated contributions that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions pursuant to Section 20750 or Section 20752.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions previously refunded that the nonmember is entitled to redeposit.



(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to redeposit the share of the nonmember in the previously refunded accumulated contributions unless the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. However, any right to redeposit previously refunded accumulated contributions not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) If the nonmember elected to redeposit upon retirement and has subsequently died, prior to completing the redeposit, the board shall file a claim against the estate of the decedent to recover benefit payments that exceeded those for which payment was made.

SEC. 9. Section 21294 of the Government Code is amended to read:

21294. (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 21290.

(b) The nonmember may purchase only that service credit that the court, pursuant to Section 21290 has determined to be the community property interest of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest required by Article 4 (commencing with Section 20990) and Article 5 (commencing with Section 21020) of Chapter 11 and pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to purchase the community property interest of the nonmember of the service credit unless the nonmember has permanently waived all rights in the system by effecting a refund of accumulated contributions pursuant to Section 21292. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(f) If the nonmember elected to purchase service credits upon retirement and has subsequently died, prior to completing the purchase, the board shall file a claim against the estate of the deceased to recover benefit payments that exceeded those for which payment was made.

